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OFFICE OF PETITIONS

In re Patent of Agejas-Chicharro et al. :
Patent No. 7,915,424 :
Issue Date: March 29, 2011 :
Application No. 10/598,512 :
Filing Date: September 1, 2006 :
Attorney Docket No. X16538 :

DECISION ON REQUEST
FOR RECONSIDERATION OF
PATENT TERM ADJUSTMENT

This is a decision on the petition filed May 31, 2011. The petition is being treated as a petition under 37 C.F.R. § 1.705(d) requesting the patent term adjustment indicated on the patent be corrected to indicate the term of the patent is extended or adjusted by eight hundred seventy (870) days.

The request for reconsideration of the patent term adjustment indicated on the patent is **dismissed**.

The patent issued on March 29, 2011, with a patent term adjustment of 649 days.

The patent term adjustment on the patent does not include any increase for delay under 37 C.F.R. § 1.703(e) ("C Delay").

Patentees argue the patent term adjustment should include a 221-day increase for C Delay.

37 C.F.R. § 1.703(e) states,

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to review by the Board of Patent Appeals and Interferences under 35 U.S.C. 134 or by a Federal court under 35 U.S.C. 141 or 145, if the patent was issued under a decision in the review reversing an adverse determination of patentability. If an application is remanded by a panel of the Board of Patent Appeals and Interferences and the remand is the last action by a panel of the Board of Patent Appeals and Interferences prior to the mailing of a notice of allowance under 35 U.S.C. 151 in the application, the remand shall be considered a decision by the Board of Patent Appeals and Interferences as that phrase is

used in 35 U.S.C. 154(b)(1)(A)(iii), a decision in the review reversing an adverse determination of patentability as that phrase is used in 35 U.S.C. 154(b)(1)(C)(iii), and a final decision in favor of the applicant under § 1.703(e). A remand by a panel of the Board of Patent Appeals and Interferences shall not be considered a decision in the review reversing an adverse determination of patentability as provided in this paragraph if there is filed a request for continued examination under 35 U.S.C. 132(b) that was not first preceded by the mailing, after such remand, of at least one of an action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151.

The Board of Patent Appeals and Interferences did not issue a decision or remand the application to the examiner in this case. Instead, the examiner issued a Notice of Allowance in response to the submission of an Appeal Brief. Therefore, an increase in patent term adjustment for C Delay is unwarranted.

In view of the prior discussion, the patent term adjustment remains 649 days.

It is noted that the Office issued a Notice of proposed rulemaking entitled *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review and Information Disclosure Statements*, 76 Fed. Reg. 18990 (April 6, 2011). To the extent that the final rule on *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review* revises the interpretation of appellate review applied in this decision, Patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the date of the final rule to file a request for reconsideration. No extensions of time will be granted under 37 C.F.R. § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement set forth in 35 U.S.C. § 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. § 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 C.F.R. § 1.18(e). No additional fees are required.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.



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